

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. 9108 OF 2004.

Shri Mahesh Nagardas Patani.....

.... Petitioner.

V/s

Bhagyachandra Mishrimal Karnavat & Anr.....

... Respondents.

Shri R. C. Shah for the petitioners.

Shri S.G.Karandikar for respondents.

CORAM: R.M.S. KHANDEPARKAR, J.

13-12-2004

PC:

Heard the learned advocates for parties.

The petitioner challenges the order passed by the lower Appellate Court allowing the appeal of the respondent-landlord against the decree of dismissal of the suit ordering eviction of the petitioner on the ground of default in payment of rent during the pendency of the proceedings for eviction. Both the Courts below have arrived at concurrent findings that the petitioner filed application under section 11(3) of the Bombay Rent Act immediately within a period of 30 days from the receipt of notice under section 12(2) of the said act. The lower Appellate Court has further held that throughout the pendency of the proceedings petitioner did not pay or deposit rent

regularly and there was default in that regard which was sufficient to order eviction of the petitioner. It was sought to be argued that considering explanation 1 to section 12 and in view of the fact that the entire arrears were deposited in terms of order passed by the Court in proceedings under section 11(3) within time and such proceedings being initiated within 30 days from the date of service of notice under section 12(2) of the said act, there was no case for eviction of the petitioner. The contention is without any substance in view of the decision of the Apex Court in the case of **Ganpat Ladha** v. **Sashikant Vishnu Shinde**, AIR 1978 SC 955. Once it is proved that the tenant has defaulted in paying or depositing rent during the pendency of the proceedings for his eviction on the ground of default in payment of rent the Court is left with no alternate but to order eviction of such a tenant. Considering the same no fault can be found in the impugned order passed by the lower Appellate Court and it does not warrant any interference in exercise of writ jurisdiction under article 227 of the Constitution. Hence petition is dismissed.